

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
SPOKANE SCHOOL DISTRICT #81)	FCC File No. 0001365870
)	
Petition for Reconsideration of Dismissal of)	
License for IG Station KJI263, Spokane,)	
Washington)	

ORDER ON RECONSIDERATION

Adopted: May 25, 2004

Released: May 26, 2004

By the Associate Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a petition filed by the Spokane School District # 81 (SSD), requesting reconsideration of the decision by the Licensing and Technical Analysis Branch (Branch) of the Wireless Telecommunications Bureau's Public Safety and Private Wireless Division,¹ which dismissed SSD's late-filed application to renew IG Station KJI263, Spokane, Washington, and denied SSD's request for waiver of Section 1.949 of the Commission's Rules.² For the reasons stated below, the petition is dismissed.

2. *Background.* SSD's license for Station KJI263 expired on April 14, 2003. Pursuant to Section 1.949, SSD's renewal application was due on that date. However, SSD did not file a renewal application until June 27, 2003.³ On September 22, 2003, the Branch denied SSD's waiver request, and dismissed SSD's application as untimely.⁴ On December 15, 2003, the Branch received a letter requesting reconsideration of the dismissal and the denial of its waiver request.⁵

3. SSD urges the Commission to reinstate its license renewal application as supplemented by additional information presented in its petition for reconsideration.⁶ We treat SSD's letter requesting reconsideration as a petition for reconsideration, rather than a supplement to the record of its initial application for license renewal, because once an application for renewal has been dismissed – as is the case

¹ The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

² 47 C.F.R. § 1.949(a).

³ FCC File No. 0001365870.

⁴ See Letter dated Sept. 22, 2003 from Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to John Barnett, Supervisor of Engineering, Spokane School District # 81.

⁵ See Letter dated Dec. 11, 2003 from Henry A. Solomon, counsel for Spokane School District # 81, to Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, FCC.

⁶ See *id.* at 2.

here -- it cannot be subsequently supplemented. Moreover, the dismissal of SSD's application was a final Commission action, subject to timing requirements of Section 405 of the Communications Act, as amended (Act).⁷

4. *Discussion.* More specifically, Section 405(a) of the Act, as implemented by Section 1.106(f) of the Commission's Rules, requires that a petition for reconsideration be filed within thirty days from the release date of the Commission's action.⁸ Computation of the thirty-day period is determined in accordance with Section 1.4 of the Commission's Rules.⁹ Since the subject application was dismissed on September 22, 2003, pursuant to Section 1.4(b)(5) of the Commission's Rules the first day to be counted in computing the thirty-day period was September 23, 2003, and the last day for filing a petition for reconsideration was October 22, 2003.¹⁰

5. SSD's petition for reconsideration was received on December 15, 2003, at the Commission's Gettysburg, Pennsylvania, office.¹¹ Therefore, we find that the petition was filed late. Moreover, we note that the Commission has consistently held that it is without authority to extend or waive the statutory thirty-day filing period for filing petitions for reconsideration specified in Section 405(a) of the Communications Act.¹² Consequently, we conclude that the petition for reconsideration filed by Henry A Solomon, on behalf of the Spokane School District # 81, must be dismissed as untimely filed.¹³

⁷ 47 U.S.C. § 405.

⁸ 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

⁹ 47 C.F.R. § 1.4.

¹⁰ The first day to be counted is the day after the day of "public notice" of action is given. In situations as we have here where a non-rulemaking document is neither published in the Federal Register nor released, and where a descriptive document entitled "Public Notice" is not released, the day "public notice" of action is given means the date appearing on the document mailed to the persons affected by the action is the day to be used in the computation of the thirty-day period. 47 C.F.R. § 1.4(b)(5). In this instance, that would be the date appearing on the dismissal letter.

¹¹ In addition, we note that the petition was filed in the wrong location. The Commission's Rules require that petitions for reconsideration be filed with the Office of the Secretary in Washington, D.C., 47 C.F.R. § 1.106(i), and warn persons filing documents with the Commission that filings submitted to the wrong location will not be processed. 47 C.F.R. § 0.401; *see also* 47 C.F.R. § 1.7 ("documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission"). Thus, even if the petition were timely, it would be subject to dismissal as improperly filed. *See* In the Matter of Memorandum of Agreement Between the Federal Communications Commission and Elkins Institute, Inc., *Order on Reconsideration*, 14 FCC Rcd 5080, 5081 ¶3 (WTB 1999) (*Elkins*); Columbia Millimeter Communications, LP, *Order on Reconsideration*, 14 FCC Rcd 2782, 2784-85 ¶ 9 (WTB PSPWD 1999), *aff'd*, *Order on Reconsideration*, 15 FCC Rcd 10251 (WTB PSPWD 2000).

¹² *See Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986). *See also* Petition for Amendment of the Commission's Rules to Establish First and Second Class Radiotelephone Operator Licenses, *Order*, 10 FCC Rcd 3196 (1995). We note that the filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late. *See, e.g.*, Panola Broadcasting Co., *Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); Metromedia, Inc., *Memorandum Opinion and Order*, 56 FCC 2d 909, 909-10 (1975); *Elkins*, 14 FCC Rcd at 5081 ¶ 3.

¹³ Moreover, even if we were to treat the petition as a supplement to the dismissed application, we would deny relief. The petition does not set forth sufficient grounds to merit granting a waiver of 47 C.F.R. § 1.949. The petition adds nothing to SSD's prior explanation of its failure to file a timely renewal application, which the Branch correctly found to be insufficient. Administrative oversight is not a unique or unusual circumstance that excuses a failure to file a timely renewal application. *See e.g.*, Fresno City and County Housing Authorities, *Order on Reconsideration*, 15 FCC Rcd 10998 (WTB PSPWD 2000) (citing Plumas-Sierra Rural Electric Cooperative, *Order*, 15 FCC Rcd 5572 (WTB PSPWD, 2000)). Moreover, SSD's assumption that neither frequency 151.865 MHz nor any other VHF frequency can be coordinated in Spokane is not persuasive absent any actual attempt to do so.

6. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed on behalf of the Spokane School District # 81, on December 15, 2003, IS DISMISSED.

7. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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